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RUCPDOC/DEPT OF COMMERCE WASHINGTON DC IMMEDIATE

RUEATRS/DEPT OF TREASURY WASHINGTON DC IMMEDIATE

UNCLAS SECTION 01 OF 05 MEXICO 002072

SIPDIS

STATE FOR EB/IFD/OIA HEATHER GOETHERT AND KIMBERLY BUTLER

STATE FOR L/CID CAMERON HOLLAND

STATE FOR WHA/MEX AND WHA/EPSC

TREASURY FOR IA MEXICO DESK RACHEAL JARPE

E.O. 12958: N/A

TAGS: EINV ETRD KIDE CASC OPIC PGOV MX

SUBJECT: MEXICO 2008 REPORT ON INVESTMENT DISPUTES

ANDEXPROPRIATION CLAIMS - PART 1

REF: STATE 437841.

Summary. The United States Government is aware of sixteen (16) claims of United States persons that may be outstanding against the Government of Mexico (GOM). Eight (8) cases are NAFTA Chapter 11 cases. In addition, two (2) cases were resolved in 2008. End Summary.

12. a. Claimants A

b. 1975

c. The Claimants signed a profit-sharing contract with a sulfur company controlled by the GOM. The investors were to have received payments for the life of the contract, but, in fact, received nothing. In 1975, the sulfur company offered to settle the dispute. Several investors did settle, but sixteen did not. The remaining sixteen were told by the company in 1980 that a USD 5 million settlement offer would be available, but no money was offered to the investors. The investors were in frequent contact with the Department of State concerning their claim until August 1997, and despite the Department's attempts to assist, the dispute was not resolved. As of June 2005, the Embassy's attempts to obtain current contact information on the company and updates on this case have been unsuccessful.

3.a. Claimant B

b. 2000

c. Claimants are a group of U.S. citizens who, in the 1970s and 1980s, leased beachfront land along the Baja California coast of Mexico. The land is part of a 37,000-acre land grant the GOM awarded in 1973 to about 80 Mexican families. By the late 1980s, the Mexican families, working through a Mexican developer, had leased most of the land to the Claimants and other foreigners, who paid up to USD 90,000 for 30-year leases and built homes, a hotel, and swimming pools.

In 1987, a private Mexican company claiming to be the original owner of the land sued the GOM to reclaim the land. The company argued that the GOM had illegally seized it through a bureaucratic error. In 1995, the Supreme Court of Mexico agreed, ruling that the land was mistakenly included in the land grant, that it belonged to the prior Mexican owners, and that the developer did not have legal title to lease the land. The U.S. Embassy subsequently attempted to facilitate discussions between Claimants and the legal Mexican landowners.

On October 23, 2000, the Mexican Supreme Court ordered the Mexican Land Reform Secretariat to evict the Claimants and

the other foreign owners of 23 houses on the property, and return the land to the legal owners within ten working days. On October 30, 2000, the GOM began evicting the foreign owners. U.S. Embassy officers were on site to ensure that the Claimants' rights and property were respected during the evictions.

Both before and since the October ruling, the Embassy has raised this issue at all levels of the GOM. In November 2000, the U.S. Ambassador noted to senior GOM officials that Claimants made their investments in good faith, and urged the GOM to actively promote negotiations between Claimants and the legal owners.

A number of members of Claimant have negotiated new lease arrangements with the legal Mexican landowners. The U.S. Government has encouraged the Claimants to consult with legal counsel regarding their legal rights and options under Mexican law.

Claimants also brought their claims before a NAFTA Tribunal, submitting a Notice of Intent on October 27, 2000, which claimed a breach of NAFTA Articles 1102 (National Treatment), 1105 (Minimum Standard of Treatment), and 1110 (Expropriation and Compensation). The Claimants seek compensation of at least USD 75 million for damages caused by the GOM, as well as the costs associated with the current proceedings and previous legal actions undertaken in Mexico and the U.S., including pre-award and post-award interest. Claimants filed a Notice of Arbitration on February 16, 2001.

Consulate officials spoke to the remaining residents in May
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2006, who reported that several of them hope to buy their property back. However, the land cannot be sold until the boundaries are authoritatively determined by the federal government, and the owners of the land are able to agree on a common development plan with the municipal government. The attorney representing the Claimants informed the Consulate that the group of approximately 30 American citizens he represents had decided not to pursue the case through the Mexican legal system due to the cost involved. He also stated that he knew of at least one case where a Claimant had been able to buy their property back. The Consulate will continue monitoring the case.

4.a. Claimant C

b. 2001

c. Claimant buys and sells the rights to external advertising. The company has steel outdoor structures and buildings in Mexico City where billboards are placed. According to the Claimant, beginning in July 2001, Mexico City government authorities began cutting down some of its billboards without any notice. The company claims that the city's removal and destruction of its steel structures constitutes an expropriation under NAFTA Article 1110. On December 12, 2001, Claimant filed a notice of intent to submit a claim to arbitration under the NAFTA, but did not pursue the claim further.

Claimant has submitted two cease and desist writs to obtain the protection of federal authorities and has briefed U.S. Embassy officials on the status of its case. An Embassy officer met with city officials in May 2002 to discuss the case. The city contends that the Claimant received clear and frequent notice of the city's intention to remove illegal (in the city's opinion) billboards, that the investor's business practices were in flagrant violation of applicable law, and that removed billboard structures would be returned to their owners upon proof of ownership and payment of any fines owed to the city. Claimant alleges that its signs were thrown away and it did not have access to the scrap materials.

Claimant informed the Embassy in June of 2006 that it, along with 30 other outdoor media companies, signed an "Agreement For The Re-ordering Of The Billboards And Public Media In Order To Take Back The Urban Image" with the GOM. This Agreement went into effect in June 2005 and is valid for five years. It provides for the control of billboard placement on certain important streets in Mexico City in exchange for faster licensing for new public billboard locations. Claimant and the various companies are working out their issues with the GOM through Mexican legal channels.

5.a. Claimant D

b. 1995

c. Claimant's sailboat was confiscated by Mexican Customs officials in 1995 on the grounds that it had been imported improperly. The Claimant subsequently lost a court case, although the sailboat was returned to him. The Secretariat of Finance and Public Credit (Hacienda) seized the boat again in 1997 and in January 2003 his second appeal was lost. In April 2004, Embassy officials sent a letter to Hacienda on behalf of the Claimant requesting that Claimant be given an opportunity to purchase the boat.

On November 3, 2004, Ambassador Garza sent a follow-up letter to Francisco Gil Diaz, Secretary of Hacienda, informing him that the Claimant wanted to meet with the proper officials to discuss the disposition of the boat and its possible sale. On July 14, 2005, the Central Administrator for Mexican Customs replied to the Ambassador's letter indicating that the boat was under the custody of SAE (administrative office for seized goods). On July 25, 2005, the Embassy sent a letter to SAE informing them that the boat administrator wanted to meet with SAE officials to make an offer to buy the boat. The boat has been in the custody of the Mexican Navy in Zihuatanejo since 2001 and has not had any maintenance. The boat is sinking and is apparently in very bad condition but Claimant still wants to buy the boat. On September 1, 2005, SAE replied to the Embassy's letter indicating that even though the boat is in SAE custody it is not for sale. Once the Mexican courts rule on the Claimant's right to the boat, it is possible that the boat will be put up for sale.

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On June 18, 2007, SAE officials reported that the Mexican government has not authorized the sale of the boat. In addition, the Embassy does not know if the Claimant is still interested in the boat, since there has been no communication from him since January 2006.

6.a. Claimant E

b. 2003

c. In August 1995, Claimant began operations in a joint venture as a stowage firm, operating the Specialized Container Terminal in the Port of Manzanillo. Over the last ten years, the firm has invested USD 350 million in several Mexican ports, which provide employment to 1,000 workers. The firm has also invested a significant amount in training and integrating the personnel.

Port authorities in Manzanillo and the Secretariat of Communication and Transportation (SCT) have not delivered to the Claimant the expansion areas within the port that are specified in their 1995 contract due to environmental problems with the area. In June 2002, President Fox issued an order to dedicate other adjacent areas to the expansion. By not delivering the expansion areas, the port authorities are not complying with the commitments made under the privatization bid and are preventing the Claimant from investing in additional infrastructure development.

The Claimant claims to have exhausted possible alternatives

to resolve these issues with port authorities and SCT in Manzanillo. In April 2004 Claimant filed a formal arbitration complaint. In early 2005, Claimant obtained a court order that obligates port authorities to provide the land for expansion, but Manzanillo's port administration and the Federal Port Authority refused to obey the order and are continuing with litigation.

By recommendation of the SCT Secretary Tellez, the Claimant has had several meetings with Under Secretary of Transportation Manuel Rodriguez, to discuss their case. The Claimant had hoped that discussions with Mr. Rodriguez would be better than previous discussions with the Port's Coordinator, Cesar Patricio Reyes Roel. However, Claimant asserts that Mr. Rodriguez is also unwilling to obey the court orders. Additionally, Claimant reports that Mr. Rodriguez has accused it of causing problems for projects in Punta Colonet and other ports.

In mid-June 2007, the Claimant obtained a new Court Decision ordering the SCT to provide the land for expansion at the Port of Manzanillo. This decision was sent to the SCT on June 20, 2007. On October 26, 2007, Claimant received formal notification that 10 hectares of land, adjacent to their container terminal, had been assigned to the company. Claimant has started work to prepare the land to be used as a container yard. All parties consider the matter to be resolved.

7.a. Claimant F

b. 2000

c. Claimant is a United States corporation that sells personal and business insurance, including accident and fire insurance. According to Claimant, Mexico facilitated the repurchase of a series of debentures denominated in Mexican pesos and owned by Mexican investors, but did not facilitate the repurchase of a series of debentures denominated in U.S. dollars, which were owned by Claimant. Both series of debentures were issued at the same time and by the same Mexican financial corporation, and each series was issued for a total amount of USD 50 million.

In October 2001, this dispute became a NAFTA Chapter 11 arbitration claim when Claimant officially filed a claim against the GOM. On the basis of the allegations highlighted above, Claimant asserts that Mexico violated various substantive obligations embodied in Section A of Chapter 11 of NAFTA, including NAFTA Article 1110, which addresses measures that directly or indirectly expropriate an investor's investment. Claimant seeks USD 50 million in damages plus applicable interest, attorneys' fees and costs for the arbitration.

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On February 6 and 7, 2003, the NAFTA Tribunal held a hearing on Mexico's jurisdictional objections to Claimant's claims. On July 17, in a preliminary decision, the NAFTA Tribunal dismissed all of Claimant's claims except for the expropriation claim. In 2005, briefing was completed on the merits of the expropriation claim. The hearing in the case was held in late September 2005 and the tribunal issued its ruling in July 2006, in which it rejected the Claimant's expropriation claim as outside the jurisdiction of NAFTA Chapter 11 but, in doing so, characterized the Government of Mexico's actions as discriminatory.

Claimant has expressed a desire for the USG to explore pursuing a Chapter 20 State-to-State case versus the GOM, and continues its efforts to negotiate a settlement with the GOM.

8.a. Claimant G

b. 2002

c. Claimant is a Delaware Corporation that alleges its property, a share of a joint venture agreement, was expropriated by Mexico in violation of NAFTA Article 1110 through a series of Mexican court actions and decisions. In 1988, Claimant entered into a joint venture contract with two parties (one of which was Mexican landowner) to develop a time-share complex on the Mexican landowner's property in Cabo San Lucas, Baja California Sur, Mexico. In 1990, Claimant learned that the Mexican landowner had transferred the entire property to the third party to the joint venture contract. Claimant therefore employed a Mexican law firm to effect cancellation of the contract and recoup its share of money already invested. A Mexican court awarded Claimant relief on August 10, 1994.

According to Claimant, unbeknownst to it or its legal representative, a former employee of the Mexican law firm purported to represent Claimant and collected Claimant's award, including the fees payable to the law firm. Claimant and its attorney filed suit against the former employee in Mexican courts, alleging a number of civil and criminal claims, including conversion. The Mexican court dismissed the suit finding, among other things, that the relevant limitations period, which ran from the time of actual knowledge of the conversion, had lapsed. Claimant had argued that actual knowledge of the conversion did not occur until two years after the date of the court's determination.

Claimant alleges that Mexican court delays and errors of law resulted in procedural and substantive injustice and amounted to expropriation of its investment in Mexico, in violation of NAFTA Article 1110. In January 2002 Claimant filed a Notice of Intent under NAFTA Chapter 11, claiming damages in the amount of USD 400,000. As of August 2006 Claimant had not submitted a Notice of Arbitration or taken any further action. There have been no changes reported to the Mission over the past year.

9.a. Claimant H

b. 1999

c. Claimant is an individual who resides in California and purchased a piece of oceanfront property near Baja California in 1989. Claimant claims that he spent more than USD 100,000 on improvements to the property between 1989 and 1992. According to Claimant, his property was seized by GOM officials in 1999. Claimant alleges that immediately after the seizure, substantial construction was conducted on the property that destroyed many of the improvements he had made.

This dispute became a NAFTA Chapter 11 arbitration claim when Claimant filed against the GOM on July 31, 2002. Claimant alleges breaches of NAFTA Article 1102 for violation of national treatment, Article 1105 for violation of treatment in accordance with international law, and Article 1110 for expropriation. Claimant seeks USD 1.5 million in damages.

In keeping with NAFTA Chapter 11 procedures, however, the Embassy does not take an active role on behalf of Claimant while dispute resolution measures are proceeding.

10.a. Claimant I

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b. 2002

c. Claimant invested USD 165 million in a plant in Mexico for the production of high fructose corn syrup (HFCS), intending to sell the product to Mexican soft drink bottlers. On January 1, 2002, the GOM imposed a tax of 20 percent on soft drinks containing HFCS. The tax did not apply to soft drinks containing sugar (principally produced by the domestic sugar industry). Since the tax took effect, Claimant

allegedly lost sales of USD 75 million, had been forced to shut down its HFCS production line, and has incurred penalties for canceled equipment orders.

This dispute became a NAFTA Chapter 11 arbitration claim when Claimant filed a notice of arbitration against the GOM on October 21, 2003. Claimant alleges the GOM's tax on HFCS violated the national treatment obligation under NAFTA Article 1102, the prohibition on performance requirements in NAFTA Article 1106 and the prohibition on indirect expropriation in NAFTA Article 1110. Claimant seeks damages in excess of USD 325 million.

On March 6, 2006, the World Trade Organization (WTO) informed the Mexican government that it had rejected Mexico's appeal of the WTO's initial ruling that Mexico's 20 percent tax on beverages using sweeteners other than sugar, principally HFCS, was illegal. In response in May 2006, then President Fox sent an initiative to the Lower House of the Congress to eliminate the tax in order to comply with WTO rulings.

However, it was not until the new Congress was in place in September 2006, that this issue began to be discussed as part of the bill outlining the 2007 Mexican budget. The initial 2007 budget proposal sent to Congress in December 2006 by the Calderon administration called for the removal of the 20 percent tax on drinks made with HFCS, complying with WTO rulings, and instead proposed a 5 percent tax on all soft drinks, regardless of the type of sweetener. The Senate rejected this proposal and all taxes on soda, including the 20 percent tax on HFCS, were eliminated in the final budget bill.

Although the tax is no longer in effect, Claimant is still seeking before the Chapter 11 tribunal compensation for the damages it sustained as a result of the tax. Claimant's NAFTA Chapter 11 claim is still pending. A hearing on the merits has already taken place, and the parties are awaiting a decision on the issue of liability.

In keeping with NAFTA Chapter 11 procedures, the Embassy does not take an active role on behalf of Claimant while dispute resolution measures are proceeding.

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